IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1521 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRATAPRAI R VYAS & 33 - Petitioner(s)
Versus
STATE OF GUJARAT, THROUGH SECRETARY & 2 - Respondent(s)

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Appearance :
MR BA VAISHNAV for Petitioner(s) : 1 - 6,6.2.1 - 34.
MS M.L. SHAH, AGP for Respondent(s) :

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 23/03/2006

ORAL JUDGMENT

1.In the present petition, the petitioners have prayed for being granted promotion to the post at the relevant time carrying pay-scale of Rs.425-700 with effect from

the date when their juniors were so promoted with consequential benefits.

2. Briefly stated, facts leading to the present petition are that the petitioners were initially working in the erstwhile state of Saurashtra. They were so engaged during the period between 26.11.49 to 16.4.56. On the reorganization of the States and merger of Saurashtra Region in the State of Gujarat, the petitioners were allocated to Gujarat State service cadres. They all retired from the State service during period ranging from 1.5.80 to 1.3.93.

3. It is the case of the petitioners that in the State of Saurashtra, initially there were no rules for appointment and promotion and the same were governed by executive instructions. These instructions required the employees to pass certain departmental examination within three years for seeking promotion. The petitioners who were in the clerical cadre are seeking promotion to the posts of Head Clerk, etc. in the scale of Rs.425-700 (pre-revised). The case of the petitioners is that as the employees of erstwhile State of Saurashtra, they were not required to pass any further departmental examination for seeking promotion upon their allocation to Gujarat State Service cadre.

It is the case of the petitioners that rules framed by the State of Gujarat insisting that the employees first pass departmental examination before seeking promotion could not have been enforced against the petitioners in the peculiar factual background to which they were absorbed in the State service.

4. The petitioners point out that under identical circumstances other employees of the same cadre had approached this Court by filing Special Civil Application No.5181 of 1984. The said petition came to be allowed by the learned single Judge of this Court by the judgment dated 13th December, 1996. Directions were issued to the State Government for granting promotion to the said petitioners if found suitable from the date when their juniors were promoted. They were held entitled to all consequential benefits of pay fixation on the promotional posts as also the benefit of higher pay-scale and revision of retiral benefits upon superannuation. It was further provided that they will receive only notional benefits from the date they were so required to be promoted till filing of the petition and actual benefits thereafter. The petitioners further point out that the petitioners are identically situated as the petitioners in Special

Civil Application No.5181 of 1984 and they should therefore receive same benefits. In fact, the petitioners represented to the authorities who declined their representation and the petitioners therefore filed the present petitions.

5. Learned advocate Shri Vaishnav appearing for the petitioners pointed out that against the decision of the learned single Judge, the State Government had filed Letters Patent Appeal which also came to be rejected. The judgment of the learned single Judge has therefore become final and in fact has been implemented qua the petitioners therein. He pointed out that the State cannot discriminate against the petitioners who are identically situated and the Government ought not to have driven the petitioners to file the present petition. He therefore submitted that the benefits flowing from the decision dated 13.12.96 in Special Civil Application No.5181 of 1984 should be made available to the petitioners also.

6. The State Government appeared and filed its affidavit in reply in response to the notice issued by the Court. In the affidavit in reply, it is stated, inter alia, that the LPA filed by the State Government against the decision of the learned single Judge came to be

rejected only on the ground of delay and laches. It is further pointed out that the Government resolution dated 17th March 1980 was not pointed before learned single Judge nor was the learned Judge pointed out the decision of the Hon'ble Supreme Court in the case of J.K.Vasavada v. Chandrakanta Chimanlal Bhavsar, AIR 1975 SC 2089. It is suggested that in the said decision, the Hon'ble Supreme Court held that on reorganization of States, the newly created State is empowered to regulate service conditions of the employees of the erstwhile States. It was submitted that the said decision of the Hon'ble Supreme Court would govern the present situation and the petitioners, therefore, cannot seek benefits as claimed.

7. Learned AGP Ms.Shah appearing for the State Government opposed the petition and submitted that the petitioners have not taken any steps for ventilating their grievances for years together. At this belated stage, it is not possible to reopen the question of promotion of the petitioners. She submitted that the GR dated 17th March 1980 and the decision of the Hon'ble Supreme Court in the case of J.K.Vasavada (supra) would govern the situation and the State was fully empowered to provide for departmental tests as a pre-

condition for grant of promotion.

8. Having heard the learned advocates appearing for the parties, I find that the petition cannot be entertained solely on the ground of delay, laches and limitation. Admittedly, the petitioners joined the State service somewhere in the year 1961 and retired from service during the period between 1980 to 1993. The petitioners during the service career never objected to their non-promotion. Admittedly, the petitioners have not passed the departmental examination required for seeking promotion to the posts in scale of Rs.425-700. Even after this Court allowed a similar petition in the year 1996, the petitioner did not take immediate steps to ventilate their grievances. For the first time in the year 2000, the petitioners filed the present petition and sought directions for being granted promotion from the dates when their juniors were so promoted. I am afraid, granting of such a request at this belated stage would not only be impermissible but would be an act impracticable and virtually impossible to be implemented. Who were the juniors of the petitioners so promoted from which date and on which posts they were so promoted and at the relevant time what were the service records of the petitioners, etc. may not

be available at this distant point of time. Not only that it would require ascertainment of the dates from which the juniors of each of the petitioners were promoted, it would also require examination of the service records of the petitioners to verify their suitability for promotion. This would necessarily include ascertainment whether there were adverse remarks in the service records of the petitioners at the relevant time, whether such remarks were communicated to the petitioners, whether there were departmental inquiries pending against the petitioners and the ultimate outcome of such departmental inquiries. Apart from these factors, whether the petitioners were fit for promotion or not are the aspects which cannot be reopened at this belated stage. Therefore, only on the ground of delay, laches and acquiescence, this petition is required to be rejected. In the case of Union of India v. Kishorilal Bablani, AIR 1989 SC 517, the Hon'ble Supreme Court observed that appointments made more than 10 years back ought not to have disturbed and such delay defeats equity and reopening of process of selection after such delay would also not be in the interest of proper functioning and moral of the service. Therefore, even if there is

some legal force in the stand of the petitioner therein, the Hon'ble Supreme Court refused to grant relief prayed for on the ground of delay and laches.

9. In the present case also, I find that it would not be possible to grant the prayers made by the petitioners for the reasons stated herein-above. The petition is therefore, rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

(vjn)